

DEC 28 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DIDAR SINGH,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 04-76372

Agency No. A78-371-657

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted December 3, 2007<sup>\*\*</sup>

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Didar Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") order denying his application for asylum, withholding of removal,

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and protection under the Convention Against Torture (“CAT”), on the ground that Singh was not credible. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand.

An intervening change in law requires us to remand because the credibility finding was based on the asylum officer’s Assessment to Refer memorandum (“Assessment”). In *Jarnail Singh v. Gonzales*, 403 F.3d 1081, 1085-90 (9th Cir. 2005), we held that an Assessment cannot, in certain circumstances, support an adverse credibility finding. Here, as in *Jarnail Singh*, there were no contemporaneous notes from the asylum officer, no transcript of the interview, no evidence that petitioner’s statements during the interview were made under oath, the asylum officer did not testify, and petitioner was not provided with an opportunity to review the Assessment, which the record indicates petitioner’s counsel first received at the hearing before the IJ. Because the agency did not have the benefit of our decision in *Jarnail Singh* at the time it addressed the issue, we grant the petition for review and remand for further proceedings consistent with *Jarnail Singh*.

**PETITION FOR REVIEW GRANTED; REMANDED.**